



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2016-0060; FRL-9987-03-Region 2]

Approval of Air Quality Implementation Plans; Puerto Rico; Infrastructure Requirements for the 1997 and 2008 Ozone, 1997 and 2006 Fine Particulate Matter and 2008 Lead NAAQS; Transport Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revision submittals from the Commonwealth of Puerto Rico to address the interstate transport of air pollution that may interfere with attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). In this action, EPA is approving Puerto Rico's submissions pertaining to the 1997 and 2008 ozone, 1997 and 2006 fine particulate matter (PM_{2.5}) and 2008 lead NAAQS.

DATES: This rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R02-OAR-2016-0060. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., confidential

business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through www.regulations.gov, or please contact the person identified in the "For Further Information Contact" section for additional availability information

FOR FURTHER INFORMATION CONTACT: Kenneth Fradkin, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3702, or by email at fradkin.kenneth@epa.gov.

SUPPLEMENTARY INFORMATION:

- I. What is the Background Information?
- II. What comments did EPA receive in response to its proposal?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

I. What is the Background Information?

On July 18, 1997, the Environmental Protection Agency (EPA) promulgated a revised National Ambient Air Quality Standards (NAAQS) for ozone (62 FR 38856) and a new NAAQS for fine particle matter (PM_{2.5}) (62 FR 38652). The revised ozone NAAQS was based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm.

The new PM_{2.5} NAAQS established a health-based annual standard of 15.0 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) based on a 3-year average of annual mean PM_{2.5} concentrations, and a 24-hour standard of 65 $\mu\text{g}/\text{m}^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations.

On October 17, 2006 (71 FR 61144), effective December 18, 2006, EPA revised the 24-hour average PM_{2.5} primary and secondary NAAQS from 65 $\mu\text{g}/\text{m}^3$ to 35 $\mu\text{g}/\text{m}^3$.

On March 27, 2008 (73 FR 16436) EPA strengthened its NAAQS for ground-level ozone, revising the 8-hour primary ozone standard to 0.075 ppm. EPA also strengthened the secondary 8-hour ozone standard to the level of 0.075 ppm making it identical to the revised primary standard.

On November 12, 2008 (73 FR 66964), EPA promulgated a revised NAAQS for lead. The Agency revised the level of the primary lead standard from 1.5 $\mu\text{g}/\text{m}^3$ to 0.15 $\mu\text{g}/\text{m}^3$. The EPA also revised the secondary NAAQS to 0.15 $\mu\text{g}/\text{m}^3$ and made it identical to the revised primary standard.

Pursuant to section 110(a)(1) of the Clean Air Act (CAA), states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affect

the content of the submission. The content of such SIP submission may also vary depending upon what provisions the state's existing SIP already contains.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. One of the structural requirements of section 110(a)(2) is section 110(a)(2)(D)(i), which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on downwind states due to interstate transport of air pollution. There are four sub-elements, or "prongs," within section 110(a)(2)(D)(i) of the CAA. CAA section 110(a)(2)(D)(i)(I), addressing two of these four prongs, requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. The two provisions of this section are referred to as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance).

The Commonwealth of Puerto Rico's Environmental Quality Board (PREQB) submitted five SIP revisions to satisfy the requirements of section 110(a)(2) of the CAA for the 1997 and 2008 ozone, 1997 and 2006 PM_{2.5} and 2008 lead NAAQS. On November 29, 2006, PREQB submitted SIP revisions addressing the infrastructure requirements for the 1997 ozone and PM_{2.5} NAAQS. On January 22, 2013, PREQB submitted SIP revisions addressing the infrastructure requirements for the 2006 PM_{2.5} and 2008 ozone NAAQS. On January 31, 2013, PREQB submitted SIP revisions addressing the infrastructure requirements for the 2008 lead NAAQS. On April 16, 2015, PREQB supplemented the January 22, 2013 submittal for the 2006 PM_{2.5}

NAAQS. On February 1, 2016, PREQB submitted additional provisions for inclusion into the SIP which address infrastructure SIP requirements for 1997 and 2008 ozone, 1997 and 2006 PM_{2.5} and 2008 lead NAAQS.

On February 19, 2016¹ EPA published a rule proposing to approve most of the infrastructure elements and sub-elements submitted by PREQB for the 1997 and 2008 ozone, 1997 and 2006 PM_{2.5} and 2008 lead NAAQS. In the February 2016 rulemaking action, EPA also proposed to approve section 110(a)(2)(D)(i)(I), commonly referred to as prongs 1 and 2. EPA finalized most other infrastructure elements in a September 13, 2016 action². This action finalizes the approval of section 110(a)(2)(D)(i)(I).

II. What comments did EPA receive in response to its proposal?

In response to EPA's proposed approval of Puerto Rico's SIP revision, a comment was received from one interested party. The comment and EPA's response were included in EPA's September 13, 2016 final rule referenced in the previous section.

III. What action is EPA taking?

EPA is approving Puerto Rico's infrastructure submittals dated November 29, 2006, January 22, 2013 and January 31, 2013, and supplemented April 16, 2015 and February 1, 2016, for the 1997 ozone and PM_{2.5}, 2008 ozone and 2006 PM_{2.5}, and 2008 lead NAAQS, respectively,

¹ See 81 FR 8455 (February 19, 2016)

² See 81 FR 62813 (September 13, 2016)

as meeting the requirements of section 110(a)(2)(D)(i)(I) of the CAA.

A detailed analysis of EPA's review and rationale for approving and disapproving elements of the infrastructure SIP submittals as addressing these CAA requirements may be found in the February 19, 2016 proposed rulemaking action (81 FR 8455) and Technical Support Document (TSD) which are available on line at www.regulations.gov, Docket ID Number EPA-R02-OAR-2016-0060.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose

substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: November 13, 2018. Peter D. Lopez,
Regional Administrator,
Region 2.

For the reasons set forth in the preamble, the Environmental Protection Agency amends part 52 of chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart BBB—Puerto Rico

2. Section 52.2730 is amended by revising paragraphs (a)(1), (b)(1), and (c)(1) to read as follows:

§52.2730 Section 110(a)(2) infrastructure requirements.

(a) *1997 8-hour ozone and the 1997 PM_{2.5} NAAQS—(1) Approval.* Submittal from Puerto Rico dated November 29, 2006 and supplemented February 1, 2016, to address the CAA infrastructure requirements for the 1997 ozone and the 1997 PM_{2.5} NAAQS. This submittal satisfies the 1997 ozone and the 1997 PM_{2.5} NAAQS requirements of the Clean Air Act (CAA) 110(a)(2)(A), (B), (C) (with the exception of program requirements for PSD), (D)(i)(I), (D)(i)(II) and (ii) (with the exception of program requirements related to PSD), (E), (F), (G), (H), (J) (with the exception of program requirements related to PSD), (K), (L), and (M).

(b) *2008 ozone and the 2006 PM_{2.5} NAAQS—(1) Approval.* Submittal from Puerto Rico dated January 22, 2013, supplemented February 1, 2016 to address the CAA infrastructure requirements for the 2008 ozone NAAQS and supplemented April 16, 2015 and February 1, 2016 to address the CAA infrastructure requirements for the 2006 PM_{2.5} NAAQS. This submittal

satisfies the 2008 ozone and the 2006 PM_{2.5} NAAQS requirements of the Clean Air Act (CAA) 110(a)(2)(A), (B), (C) (with the exception of program requirements for PSD), (D)(i)(I), (D)(i)(II) and (ii) (with the exception of program requirements related to PSD), (E), (F), (G), (H), (J) (with the exception of program requirements related to PSD), (K), (L), and (M).

(c) *2008 lead NAAQS—(1) Approval.* Submittal from Puerto Rico dated January 31, 2013 and supplemented February 1, 2016, to address the CAA infrastructure requirements for the 2008 lead NAAQS. This submittal satisfies the 2008 lead NAAQS requirements of the Clean Air Act (CAA) 110(a)(2)(A), (B), (C) (with the exception of program requirements for PSD), (D)(i)(I), (D)(i)(II) and (ii) (with the exception of program requirements related to PSD), (E), (F), (G), (H), (J) (with the exception of program requirements related to PSD), (K), (L), and (M).

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